No. 11.

Documents from New York State Union Central Committee.

ARBITRARY ARRESTS.

SPEECH

OF

HON. P. E. HAVENS,

OF

ESSEX COUNTY.

In the House of Assembly, March 5, 1863.

MR. SPEAKER:

I have listened with great interest to the debate which has taken place upon these resolutions. I did not at first intend to take part in their discussion, and feel now that I am almost a trespasser in again asking the attention of the House. The questions raised, however, are of so much importance, and my feelings have become so deeply interested as to the action which this House may take, that I could not feel satisfied to give a silent vote.

In my remarks upon the Governor's message I had time to give but slight attention to the legal question of the constitutional right of the Executive to make these arbitrary arrests.

The able discussion which has since taken place, and a more thorough examination of authorities, have not materially changed the views which I then briefly advanced.

I desire now to give this question of Constitutional right a more careful examination, and to add a few remarks touching the propriety of the proposed legislative action.

I will do this in as few words as possible, and shall feel very grateful for the candid attention of the House.

I submit for consideration the following propositions:

1. The Executive power vested in the President by the Constitution involves not only the faithful execution of the laws, but also the protection of the life of the Nation from both intestine and foreign foes.

2. This power is only limited by the necessity which calls it into action and renders its exercise proper.

3. The Executive is the sole judge of the necessity requiring the exercise of this power, and can not be checked, controlled or dictated by other branches of the Government.

The first proposition is too plain to need argument. A Government having no concentration of Executive power, by which to shield itself from the assaults of its enemies, or to crush a sudden outbreak of rebellion against its authority, would be no Government at all. It would not possess the power of self-defense indispensable to its existence, and would fall to pieces, like a rope of sand, at the first attempt made upon its life.

The second proposition follows necessarily from the first. In accordance with the great law of self-defense, the power and means to be used must be adequate to the danger and extremity of the case.

The third proposition grates harshly upon the feelings of freemen. Until we have candidly weighed and examined the question, we start back from the conclusion, and visions of tyranny, loss of liberty, abuse of executive authority and military despotism arise before the mind.

I apprehend, however, that reflection and candid examination will dispel these visions, and convince all liberal-minded men that instead of endangering our liberties, this executive power is one of the strongest bulwarks of their defense.

Those who advocate the passage of these resolutions freely admit the truth of this 3d proposition, as to states or districts where war exists, but they deny that such power is vested in the Executive in states and districts where the civil law is as yet unobstructed. This is the great issue between us.

I have myself entertained serious doubts upon the question. I confess, however, that my examination of the authorities and precedents furnished by the history of the past, and a more careful study into the principles and powers necessary to guard and protect the life of a nation, has done much to remove those doubts.

There are instances in the history of almost every nation, where the prompt exercise of this power at a time when all was as yet quiet and undisturbed in the administration of civil law, has prevented war and rebellion, broken up secret conspiracies against the Government, and

saved the nation from violence, bloodshed and civil war. A few such instances were cited in my former remarks in review of the message.

I have listened anxiously but in vain to hear what was to be said by the opponents of this doctrine in answer to the great precedent established by Thomas Jefferson in the case of the Burr conspiracy, before cited by me. In that case *the civil law was not obstructed*—war did *not* exist—martial law had *not* been declared—and yet Mr. Jefferson sanctions the arrest of the conspirators *without civil process*, and takes them out of the state where they were arrested and where the conspiracy occurred; and in his letter to Gov. Clairborne lays down the doctrine *that this exercise of power on the part of the Executive is justifiable even in defiance of civil law, in cases of great public danger.*

The administration of civil law was *not* obstructed in New Orleans at the time General Jackson ordered the arrest of the Frenchman, and put his hand on the liberty of the press, except in so far as the Commanding General still exercised his military power in a few instances, which, in his judgment, still required his interposition.

The war was virtually ended, and with the removal of the necessity for martial law, its stringent rules were so far relaxed that the civil authorities had resumed their powers and functions and the courts were then actually engaged in the administration of the civil law; and the point in dispute between Judge Hall and General Jackson was, whether, under such circumstances, martial law could in any case longer supersede and prevail over the jurisdiction of the civil courts in arbitrarily arresting individuals and controlling the freedom of the press.

But the old hero would not listen to the arguments of the judicial functionary, nor be in the least interfered with in still doing what he deemed necessary to protect the nation from the few cases of lurking treason which came to his knowledge, claiming that he had such right under the Constitution *as he understood it.*

Judge Hall, in attempting to thwart him from his purpose by the arm of the civil law, himself felt the weight of this military power and had an opportunity to reflect over the horrid doctrine of arbitrary arrest in close confinement.

I have heard nothing from Democrats on this floor to shake or overrule these great precedents which the Nation has sanctioned and approved.

Mr. T. C. Fields. Does the gentleman from Essex claim that the President has power to suspend the writ of *habeas corpus*, without the authority of a law, for that purpose?

Mr. Havens. Most certainly I do; or which is to the same effect, he may disregard the writ in times of public danger, and in such cases as in his judgment the safety of the government and the success of his efforts to crush rebellion may require such a measure.

Mr. Fields. Then, why has congress, recently, clothed the President with such power by an express enactment?

Mr. Havens. I shall comment on this recent act of congress before I am through. When the question put by the honorable gentleman shall receive attention.

Do Democrats deny these stubborn facts and authorities which I have cited? If so, you will raise as bold and unsafe an issue upon historical fact as you have raised upon Constitutional law, and I will fearlessly submit the question to the verdict of an intelligent people to examine and determine between us.

Have Jefferson and Jackson, indorsed by the Nation, all at once ceased to be authority among Democrats?

Will you, at this late day, take issue with the great apostle of liberty and the honored hero of New Orleans, with nothing to support you but your own *ipse dixit*, a few scattering *obiter dicta*, and your fears that this power has been or may be abused? In the language of Reverdy Johnson in his recent letter to me, "Abuses all power is subject to. It argues nothing, however, against the power itself."

Mr. Seymour. Has the gentleman from Essex examined the remarks of Judge Story and Chancellor Kent upon this Constitutional question?

Mr. Havens. I have carefully examined the authors mentioned by the gentleman from Erie. Justice Story in his Commentaries *does* incidentally say: "That the power to suspend the writ would *seem* to be a legislative power." I may not remember his words precisely, but this gives the full force and purport of them.

I do not regard the remark of Judge Story as in conflict with the doctrine for which I contend. It is not necessary for me to deny that Congress has the power to suspend the writ by legal enactment; but what I claim is that the Executive also has the power and discretion to disregard the writ in times of public danger as are incident to the war power. Judge Story no where denies or intimates a word against such a power in the Executive.

As to Chancellor Kent, I am not aware that he has expressed himself directly upon this question.

I should not moreover consider the remarks of any elementary writer as entitled to any weight as against the authority of a unanimous decision of our Supreme Court directly upon the question at issue.

I know our venerable Chief Justice has recently held a different doctrine in the Merriman case, *ex parte* cited by my honorable friend from New York, but before I am through I will show you how that opinion compares with his own decisions in former years and leave you to judge whether secession has taken advantage of his dotage and disturbed the equilibrium of his judicial perceptions, as I fear slavery extension did in *Dred Scott*.

It is gravely asked by members on this floor whether the State of New York is under *martial law*, and if not, how these arrests can be sustained in the midst of the administration of civil law?

I answer, that although martial law has not been declared over the people of this state, as such, nevertheless this and the other states of

this Union, are now and ever have been subject to the exercise of the Executive and military power of the nation, in such cases as in the judgment of the Executive the same was required to protect the Nation from treason and rebellion, and that it is perfectly proper and not inconsistent with the general exercise of the civil power to suspend the writ in *individual cases*, leaving the civil power otherwise unobstructed throughout the state.

I cannot better express my views on this subject than to quote an extract from the published opinions of that great jurist, Reverdy Johnson, the greatest, I claim, in our nation.

Mr. Johnson, after showing most conclusively, as I think, that the President, as well as Congress, has power to suspend the writ, proceeds to point out the distinction between the two powers, as follows:

I hope every word which I have quoted from this great lawyer will be listened to.

His standing in the nation, is such, that I feel warranted in quoting liberally from his opinion.

"The power to suspend the writ which the President has, is not the same power given to Congress by the ninth section of the first article of the Constitution.

"That looks to a *general suspension for a limited time.*

"During that time, as far as the Government of the United States is concerned, the writ is totally inoperative. No one, no matter how imprisoned by the authority of the Government, can have the writ. Its total suspension within the period determined by Congress, not only covers the cases of persons arrested upon treasonable charges or suspicions, but all other cases, irrespective of the causes of arrest.

"This is not the power vested in the President. *His authority is measured and limited by the existing exigency of each arrest. In each instance, if the grounds of arrest involved in any way the success of his array of force, he has a right to hold the party till all danger to that object is at an end.*

"*This being a military question, it must be for him as Commander-in-Chief, or his agents to decide it.* He does not assume the power to suspend the writ in the sense in which that power is in Congress. Congress can repeal it altogether for a time. Without repealing, he disregards it for the military end he is bound to accomplish:—the suppression of the rebellion by force, and *only in such instances* as are thought by him to be material to that end.

"The two powers are by no means identical. The one is legislative; the other executive. The one is a civil, the other a war power. If the war power of every government may declare martial law—*and this no one has yet denied*—then it must have the power as one of the admitted incidents of martial law to disregard the writ in question."

I regard it unfortunate for my honored friend from New York that he found himself mistaken as to the views of this distinguished jurist—unqualifiedly sustaining as they do, the Administration in the exercise of the power to make these arrests whenever and wherever the President shall deem the safety of the nation and the success of the war to require it, in one of the most learned and able opinions ever written on this continent.

Sir, it has seemed to me that those who so strenuously oppose these arrests, and urge that suspected conspirators, aiders and abettors of treason and rebellion, discovered by the Executive in places where no war is, should alone be arrested by civil process, and punished, if found guilty, in the civil tribunals, lose sight of the fact that the *primary object of making these military arrests is not to punish the guilty parties, but is to hold them in custody and prevent all mischief from their acts until the public danger has passed.*

If this power can not be exercised by the Executive, in disregard of the writ, would he not be embarrassed and hampered in his efforts to put down treason? Would not the writ be used to endanger and defeat the success of the war? Would it not tend to aid the rebellion?

The writ could be issued by any justice or judge in any of the states under state authority, and if the doctrine is sound that Congress alone can suspend its operation, and be not in session at the time and perhaps not to assemble in months, no traitor, no spy, no citizen ever so treasonably aiding the rebels, or even about to join their army in the field, could be held in custody a moment.

The writ might meet the officer at every corner, force him to surrender his prisoner and abandon his military operations to await the action and delay of the civil tribunals in their investigations to decide on the validity of the arrest. It is easy to see that in many instances this might entirely defeat the Executive in his efforts to put down rebellion.

I hold the case in Maryland to be an ample demonstration of this.

No sane man conversant with the facts would hazard his title to common sense and common discernment by denying that the State of Maryland, with all its geographical importance in the great contest, was saved to the Union and kept from the horrors of secession by these arbitrary arrests, incarcerating for a short time the chosen members of her Legislature, about to consummate their foul plot of secession and plunge the state in a bloody civil war.

But, Sir, I claim that this doctrine is also sustained by the highest judicial tribunal in the Nation. I beg leave to cite a few authorities regarded as in point.

I cite first the case of Martin and Mott, 12 *Wheaton*, 19.

In this case the point was distinctly raised as to the independence of the President in judging of the necessity which would authorize him to use the military power in making these arrests, and the supreme court unanimously decided that he was the *sole judge of the facts which authorized the use of that power*, and that his decision was conclusive not only upon the citizens but upon every other branch of the Government, whether Federal or State.

The language of the court is: "*The authority to decide whether the exigency has arisen belongs exclusively to the President, and his decision is conclusive upon all persons.*"

Again, in the case growing out of the Dorr Rebellion in Rhode Island in 1842, reported in 7 *Howard*, 1, the question at issue was one of conflict between the civil and military power of the state. A few persons had already assembled in arms to support Mr. Dorr in the power which he had assumed, and others in different parts of the state, were suspected of an intent to arm in opposition to the Charter Government.

The defendant was not in arms, but was sus-

pected only of complicity, and upon this suspicion alone his house was broken open by military officers to effect his arrest.

An action in the civil courts was brought for this trespass, and the point to be decided was whether the state in the exercise of its Executive power had the right to substitute martial for civil law over its whole territory, and authorize its military officers to disregard the latter.

The court unanimously held the affirmative of the issue, justifying the acts of the defendant under martial law, and among other reasons for their decision the celebrated Chief Justice TANEY assigned the following:

"The remaining question is, whether the defendants, acting under military orders issued under the authority of the Government, were justified in breaking and entering the plaintiff's house. In relation to the act of the Legislature declaring martial law, it is not necessary to inquire to what extent, nor under what circumstances, that power may be exercised by a state. Undoubtedly a military government, established as a permanent government of the state, would not be a republican government, and it would be the duty of Congress to overthrow it. But the law of Rhode Island evidently contemplated no such government. It was intended merely for the crisis, and to meet the peril in which the existing government was placed by the armed resistance to its authority.

"*And unquestionably, a state may use its military power to put down an armed insurrection too strong to be controlled by the civil authority.*

"*The power is essential to the existence of every government: essential to the preservation of order and free institutions, and is as necessary to the states of this Union as to any other government.*

"*In such a state of things the officers engaged in the military service might lawfully arrest any one who, from the information before them, they had reasonable grounds to believe was engaged in the insurrection, and might order a house to be forcibly entered and searched when there were reasonable grounds for supposing he might be there concealed.*

"*Without the power to do this, martial law and the military array of the Government would be mere parade, and rather encourage an attack than repel it.*"

From this the Chief Justice proceeds to discuss, upon general principles, the right of the *President alone to exercise this same military power as the Executive and Commander-in-Chief of the whole nation, maintaining and holding not only that the President alone possesses that power, but that it is not subject to the revision of the courts.*

The concluding portion of this remarkable opinion on this point is as follows, and I beg the undivided attention of my Democratic friends to the language used by the Chief Justice:

If it could (that is if the court could revise), *then it would become the duty of the court* (*provided it came to the conclusion that the President had decided incorrectly*) *to discharge those who were arrested or detained by the troops in the service of the United States or the Government which the President was endeavoring to maintain.*

IF THE JUDICIAL POWER EXTENDS SO FAR, THE GUARANTEE CONTAINED IN THE CONSTITUTION OF THE UNITED STATES IS A GUARANTEE OF ANARCHY AND NOT OF ORDER.

Sir, this is the language of the same Chief Justice Taney who recently decided, in the Merriman case, that the President has no power to suspend or disregard the writ, but can only act in suppressing the rebellion in aid of the civil authority.

The honorable gentleman from New York may if he pleases, quote this recent ruling of the Chief Justice acting alone at Chambers in support of his position, but I choose to abide by the decision of the same learned judge and his associates in full bench in 1842, when the *peculiar institution of the South* was not involved in the issue.

Sir, nothing could be more explicit or to the point than this decision of our Supreme Court in 1842, and which has never been overruled. English language could not better it in making it applicable to the question in dispute.

There can be no mistake about it, and I would not fear to impannel a jury from Democrats on this floor, and go before them with the facts, and the law as here laid down, and if they would for a few moments lay aside party prejudice, I would secure from them a verdict of honorable acquittal in favor of Abraham Lincoln.

MR. DEAN. I desire to ask the gentleman from Essex if I could not be appointed foreman on that jury?

Mr. HAVENS. Most certainly. I should select the honorable gentleman for my foreman. His well-disciplined, judicial mind—his appreciation of the binding force of judicial precedents—would aid me much in bringing the jury to agree and render a prompt verdict on their oaths in favor of my client.

But I must hasten in my remarks.

I will only add by way of authority, that both General Jackson and General Hamilton strenuously maintained this independence of the Executive over the civil power each acting in their separate spheres under the Constitution.

In defending the proclamation of neutrality, issued by General Washington in 1793, which was bitterly assailed as a usurpation of Executive power and as not warranted by the Constitution, General Hamilton, a statesman of whom this nation will ever be proud, in a series of letters to Mr. Madison, maintained the entire independence of the Executive, under the Constitution, in promptly acting in times of public danger, free of all restraint from the other branches of the Government.

In 1832 General Jackson flatly refused to abide by the unanimous decision of the Supreme Court upon a Constitutional question involving his duty as President, claiming that it was his right as well as his duty, under his oath, to support the Constitution as *he understood it.* General Jackson, no doubt, allowed his iron will to carry him too far; and beyond the cases of war and public danger requiring from their nature unfettered military action, upon the necessity of which the right is based, he would not be sustained.

Sir, whatever may be our present views and wishes as to the best national policy to be pursued, I cannot, for the reasons and authorities I have given, consider the right of the Executive to disregard or suspend the writ and *to judge of the necessity which requires such suspension* an open question, and I claim that the Administration is triumphantly sustained, both upon principle and authority, in the exercise of this power.

The objection that this power is liable to abuse, is but an objection which can be raised against all power.

In answer to this objection, I beg leave to make another quotation from the same learned opinion of Chief Justice TANEY in the Rhode Is-

land case before cited. This same objection was raised by counsel on the arguments of that case and the Chief Justice on that point speaks as follows:

"It is said that this power in the President is dangerous to liberty and may be abused. All power may be abused if placed in unworthy hands.

"But it would be difficult, we think, to point out any other hands in which this power would be more safe, and at the same time equally effectual. *The ordinary proceedings in courts of justice would be utterly unfit for the crisis.*

"And the elevated position of the President, chosen as he is by the people of the United States, and the high responsibility he could not fail to feel when acting in a case of so much moment, appear to furnish as strong safeguards against a willful abuse of power, as human prudence and foresight could well provide.

"AT ALL EVENTS IT IS CONFERRED UPON HIM BY THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND THEREFORE MUST BE RESPECTED AND ENFORCED IN THE JUDICIAL TRIBUNALS."

Sir, if Democrats will allow party zeal so to prejudice their minds that they will not listen to the teachings of Jefferson, Jackson and Hamilton, nor accept the decision of our highest judicial tribunal, as proclaimed by Chief Justice TANEY himself, neither will they believe if one arise from the dead, and I shall almost despair of converting them from the error of their ways.

Sir, I have never felt alarm at the existence of this power in our Government. I do not believe it could ever subvert our liberties or be abused to any great extent.

In an enlightened nation of freemen like our own, it must ever be held in check and regulated *by the ballot box and the all-controlling power of public opinion.* If we *could* do so, we should hesitate to take from our Executive a power which our *purest and wisest statesmen have considered essential to the existence and safety of our Government*, and which may be needed to protect and save the liberty we love so dearly, simply because a few individual cases of hardship have occurred.

In our sympathy for a few individuals, who may have been for a short period wrongfully deprived of their freedom through the mistakes of the Administration, or the unfaithfulness of its subordinate officers, *let us not madly rush at the Temple of Liberty erected by our fathers and attempt to pull down one of its most essential pillars, lest we destroy its magnificent frame-work and reduce it to a pile of ruins.*

Sir, these resolutions propose to turn this legislative body into a court of inquiry, and to summon before it all the aggrieved parties from different portions of the state, to hear their stories of grief, and then sit in judgment upon the acts of the General Government touching their arrest.

Sir, I doubt not we should find a few cases of hardship and injustice, and I doubt not, too, *if both sides were fairly heard*, we should find that in a great majority of the arrests made, the Government was abundantly justified in its action, and only to blame for liberating the scoundrels instead of handing them over to the civil authorities for conviction and punishment, as was done in the Burr conspiracy.

But I can see no present or future good to be accomplished by all this investigation as an offset to the enormous expense with which it would be attended, and the loss of valuable time it would consume, and which we can so illy afford to spare from the few remaining days of the session.

I apprehend that the people will be better pleased to see us attending to our legitimate legislative duties, leaving the General Government to manage its own affairs upon its own responsibility.

The courts are open to the aggrieved parties where private redress can be had if the arrests were illegal.

MR. DEAN. Does not the gentleman from Essex know that Congress has just passed an act providing that no suits shall be brought in such cases—thus attempting to cover up the illegal acts of the Administration? Does the gentleman claim that such an act is constitutional?

Mr. HAVENS. For a reasonable compensation I will examine any of the acts of Congress, and give an opinion upon their constitutionality.

What I mean now to assert is, that if these arrests were illegal, and the parties arrested have any claims for redress, the proper tribunal in which to seek that redress is the civil courts, and not this Legislature. If in the civil courts the arrests should be held to be legal, either by virtue of antecedent constitutional right in the President, or by force of subsequent statute of indemnity, the defendant would fail—otherwise he must recover. The same principle of law which would prevent a recovery in the courts, would also stand in the way of legislative action.

The constitutional rights of the President and the acts of indemnity passed by Congress would be *as binding upon the Legislature as upon the courts*, and hence there is no reason why we should leave our legitimate sphere of legislation and attempt to perform the duties of the civil courts.

The advice which I should give to these aggrieved parties would be to remain quiet until peace and tranquillity is restored to the nation, when I have no doubt all cases of hardship and injustice incident to the great contest, and accruing to *loyal* citizens either north or south, will be amply redressed by the Government.

I will, if you please, save you all the trouble and expense of all this proposed investigation. I will give you a *cognovit*, without trial, that the Government has been somewhat in fault in regard to these arrests.

But now, you have your judgment, what are you to do about it? Has anything been accomplished?

Is it to prepare the way for a collision between the State and National authority, so unfortunately threatened, in the speech of the gentleman from New York, that this investigation is sought?

Sir, while I admired the ability displayed by that gentleman in his eloquent speech, and was also much amused at his relation of the Puritan primer stories of rum and Indians, and the religious idiosyncrasies of the early settlers of the eastern colonies (although I could not see their bearing, occurring as they did, long before *New England, as such, had an existence.*) I was pained to hear the gentleman so far forget himself as to

leave legitimate argument, and utter sentiments looking towards rebellion on the part of the State of New York against the General Government, because that Government had ventured to exercise a power which, I claim, is triumphantly sustained by repeated precedent and by the highest judicial tribunal in the Nation.

Does the gentleman assume to gather this sentiment of resistance to the National authority from the message of his Excellency? and from that does he warn us in behalf of the State Executive that *two parties can play at this game of arbitrary arrest?*

Sir, with all my objections to the character of that message I have not been so uncharitable as to charge it with this startling element, and I almost shrink from the conclusion which the plain language used by the honorable gentleman would seem to warrant, especially after the sentiments of loyalty so eloquently expressed by him upon this floor.

Grant that the Government has been in fault; does that warrant such threats as these from those who occupy high places in State authority? *Is that the way to save our country when her only hope is in a united North?*

Did you Democrats expect that the Republican Administration and all its subordinate officers were infallible, and liable to no mistakes in the great struggle through which we are passing? If you did so expect, you must submit to slight disappointment, and abide your time.

I advise you, instead of resisting the National Government, to lay your grievances before the people at the tribunal of the ballot-box, and try to elect a President from your own ranks who shall be free from imperfection, and who will see that none of his subordinates make any mistakes, or do any wrong.

Perhaps you can find another James Buchanan to guide the ship of state for awhile, and finish its destruction among the dangerous shoals and quicksands into which your first Buchanan and his traitorous crew steered and abandoned it.

I acknowledge that it would be a splendid stroke of party policy for you to summon before you, *at the expense of the State*, all these Northern traitors and semi-secessionists, and under an *ex-parte* examination, take from them the piteous story of their wrongs, their griefs and injured innocence, and then blaze the evidence before the public to prejudice the minds of the people.

If you really desire to destroy the influence and power of the Government in this hour of its extremity, you could not do better than to arraign the Administration in which that power is now vested, and subject it to the *ex parte* trial which you propose, with these complaining, revenge-seeking traitors for witnesses.

They would undoubtedly swear vigorously, and to the point. They would all make themselves out the first order of patriots, with no smell of treason upon their garments. Their wrongs and sufferings at the hands of the Government and its cruel officers would appear intolerable. The Nation itself would sigh with sympathy at their recital of cruelty, and the poor Republican Union party would stand convicted in your one-sided court of high-handed outrage upon these suffering, self-styled patriots.

Sir, I should be glad to see all these complaining accused parties fairly tried in the proper judicial tribunals—not upon their own, but upon proper evidence—that the guilty might be punished and the innocent honorably acquitted. But I cannot consent to enter upon a measure which to me appears bootless of all results, except to manufacture political capital and afford all these Northern traitors an opportunity to stab the Government for their alleged wrongs, fancied or real; and I call upon the honorable gentleman from New York, whom I still have charity to believe loves his country better than his party, to hesitate in pressing this measure, lest in his zeal to bring the Government under censure, and to serve the interests of his party, he may fatally weaken the power necessary to save that Government from hopeless ruin.

It is now well known to all that Congress has just passed an act providing that when these arrests are hereafter made by the Executive, the accused parties shall, in due time, have the benefit of a hearing before the *civil tribunals*, to be punished or acquitted, as the merits of the case may demand—a provision of law which did not before exist in our Government, and a fact which extenuates, at least, what has been regarded as a fault on the part of the Administration in discharging the parties arrested without a hearing.

Indeed, as a legal question, it is difficult to see how, without such an act as has just been passed, these proceedings under martial law could be followed by any other than a trial before a *court martial.*

It seems however that the Government found a way, in the case of the Burr conspiracy, to hand the accused parties over to the civil tribunals, without the aid of a law for that purpose.

And here I will answer the question of my friend from New York (Hon. T. C. Field).

I do not concede, that the recent acts of Congress conferring extraordinary powers upon the President, militates, or raises an inference even, against the position I have taken, but on the contrary tends to its support.

It shows that the President has so judiciously and faithfully exercised the Executive power given him by the Constitution, as to inspire the full confidence of the Legislative branch of the Government, and induce them still more to strengthen his hands in the conflict, by conferring on him the power of legislative sanction.

It is but uniting and concentrating the two distinct powers, so clearly defined by Reverdy Johnson, rendering the Executive arm more potent for our defense, and putting to silence the cavils and objections of those whose mouths are ever filled with complaints against the action of the North, and with excuses in palliation of the rebellion of the South.

Since Congress has now taken away all the grounds of objection upon which these fault-finders have so long harped, I shall be anxious to know what technical constitutional questions will next be raised for topic of complaint.

With this remedy and assurance now upon

our statute book, let us for the present overlook and forgive past faults of the Administration, if faults they be, and instead of weakening its hands by dwelling upon and magnifying those faults let us strive to conquer party feeling and work together like men and patriots for the salvation of our beloved country.

Let us imitate the high-souled repudiation of party feeling, so beautifully expressed by Gov. Todd, of Ohio, *the chairman of the last Democratic Convention at Baltimore*, after its adjournment from Charleston.

That noble-hearted Democrat and patriot, at a public meeting held in Cincinnati on the 22d ult., to rebuke the movements of the Copperheads of Ohio, said as follows.

"I support Mr. Lincoln, not because he is a Republican—not because he is a tariff man or an anti-slavery man but because he *is President of the United States and by virtue of his office entitled to the support of all loyal men.*

The man who can't smother party prejudice and feeling enough to do that is not fit for a free government.

That, Sir, is what I call the *ring of the true metal.* Such a man as that is worthy to be President of the Republic.

Mr. T. C. Field. Will the gentleman from Essex accept Gov. Todd as authority?

Mr. Havens. I will accept him as good authority, in what he now says:

He has been in too suspicious company for me to risk a general admission of all his former political views.

Whatever those political views may have been, he now rises above party politics and shows himself a patriot, willing, if necessary, to sacrifice his political feelings and preferences, and render a cordial and hearty support to the Government, that his country may, perchance, be saved from ruin.

Sir, such a man as he, who will thus conquer his political prejudices and rise above his party to save his country, gets a place near my heart. I love him the more for the sacrifice he has made, and would sooner die by his side in defending my country, than beside a man of my own political views.

Sir, the sifting among the millions of the North is progressing rapidly.

It will soon be known to the world who will stand firmly by the Government of our fathers, support the flag of our Union to the last, and who would lower that flag in mean submission to the traitors of the South.

However much other states in the East or West may falter in this hour of trial, God grant us one blessing, that this noble Empire State, may not fall into the hands of these Copperheads and Northern traitors, and that we may be saved from the eternal disgrace which they would bring upon us and our children.

I will not believe that Democrats in this state are to follow the lead of such men as Thomas W. Seymour, Vallandigham, Cox and others.

I will venture to vouch for them in my own county. Strong as are their party ties, they will not sacrifice their country for party, but stand loyal and true as they have ever done. They have not forgotten the dying words of the patriotic Douglas, and when you come to draw the line you will find them like the fearless Prince John—*in for the war, party or no party, till the Nation is saved from its enemies.*

No, my friends, we cannot afford to quarrel in this awful crisis and barter away our glorious birthright. While the barque on which we sail, freighted with the destinies of the Republic, is laboring in the great storm,—her masts bending beneath the furious blast—her timbers creaking and threatening to give way under the unwonted strain, and while her captain is shouting for all hands on deck to save the noble vessel and all on board from destruction, let us not mutinize against the order; remain in the cabin quarreling over a division of the cargo, and disputing as to who shall sit at the head of the table; but let us as one man spring to the deck, and by our united efforts, save the noble ship and its invaluable cargo from imminent peril.

Let us first rescue the Republic from the machinations and assaults of all its enemies, and then we will have both time and opportunity to review the past, correct, as far as practicable, the errors and mistakes which have been incident to the great struggle and settle and redress all these little troubles.

When the fiery trial and bloody conflict is ended, we will do our best, with the aid of past experience, to establish perfection and infallibility in all departments of the Government, to the end that it may remain through future generations *the temple of Constitutional freedom for the world—the asylum for the oppressed of every clime—the land of the free, and the home of the brave.*